

## **REMARKS**

### **I. Introduction**

With the addition of new claims 10 to 18, claims 1 to 18 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants note with appreciation the acknowledgment of the claim for foreign priority. As regards a certified copy of the priority document, i.e., German Application No. 100 52 005.7, the Examiner will note that enclosed herewith is a certified copy of German Application No. 100 52 005.7, to which the present application claims foreign priority.

Also, Applicants respectfully request consideration of the Information Disclosure Statement, the PTO-1449 paper, and the cited references, filed on October 19, 2001, and an initialed copy of the PTO-1449 paper with the next Office communication.

### **II. Rejection of Claims 1 to 9 Under 35 U.S.C. § 112**

Claims 1 to 9 were rejected under 35 U.S.C. § 112, second paragraph as indefinite for allegedly failing to particularly point out and distinctly claim the subject matter of the invention. While Applicants do not agree with the merits of this rejection, to facilitate matters, claims 1 to 4, 6, 8 and 9 have been amended herein without prejudice to improve their clarity. In view of the foregoing, it is respectfully submitted that claim 1 to 9 fully comply with the requirements of 35 U.S.C. § 112, and withdrawal of this rejection is therefore respectfully requested.

### **III. Rejection of Claims 1 to 9 Under 35 U.S.C. § 102(b)**

Claims 1 to 9 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,880,353 ("Graser et al."). Applicants respectfully submit that Graser et al. do not anticipate the present claims for the following reasons.

Claim 1 relates to a measuring sensor for determining an oxygen content of a gas to be analyzed. Claim 1 recites that the measuring sensor includes a protective housing permeable for the gas to be analyzed, the protective housing including a double casing, the double casing including an inner casing. Claim 1 further recites that the measuring sensor includes a first heater configured to heat

the inner casing and a ceramic sensor member situated in the protective housing, the ceramic sensor member including a second heater configured to heat, during a measuring operation, the ceramic sensor member to a temperature above 300°C and to retain the ceramic sensor member at a temperature above 300°C.

Graser et al. purport to relate to a gas sensor for determining an oxygen content in exhaust gases of a combustion engine. The Office Action at pages 2 to 3 contains general allegations regarding the disclosure of Graser et al. The Office Action contends that “[s]ince Graser et al. teach that the sensor is to be used in determining the oxygen content of exhaust gases emitted from combustion engines, it is inherently anticipated that the casing would be heated due to the exposure to the heated exhaust gases”. Office Action at page 3. However, the Office Action fails to even allege that Graser et al. disclose, or even suggests, a first heater configured to heat an inner casing or a ceramic sensor member including a second heater configured to heat, during a measuring operation, the ceramic sensor member to a temperature above 300°C and to retain the ceramic sensor member at a temperature above 300°C. It is respectfully submitted that Graser et al. fail to disclose, or even suggest, a first heater configured to heat an inner casing or a ceramic sensor member including a second heater configured to heat, during a measuring operation, the ceramic sensor member to a temperature above 300°C and to retain the ceramic sensor member at a temperature above 300°C.

In contrast, Graser et al. apparently relate to a gas sensor including “a planar sensor element 12 immobilized in gas-tight fashion in a metal housing 11” such that the “[s]ensor element 12 consists of an oxygen ion-conducting solid electrolyte ceramic having electrodes” and a “[s]ensitive region 13 of sensor element 12 is surrounded by a double-walled protective tube 16” that includes “an outer protective sleeve 17 and an inner protective sleeve 18.” Col. 2, lines 9 to 23. However, the foregoing does not constitute a disclosure, or even a suggestion, of the subject matter recited in claim 1.

It is “well settled that the burden of establishing a prima facie case of anticipation resides with the [United States] Patent and Trademark Office.” Ex parte Skinner, 2 U.S.P.Q.2d 1788, 1788-89 (Bd. Pat. App. & Inter. 1986) (citing In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628,

631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Graser et al. do not disclose, or even suggest, a first heater configured to heat an inner casing or a ceramic sensor member including a second heater configured to heat, during a measuring operation, the ceramic sensor member to a temperature above 300°C and to retain the ceramic sensor member at a temperature above 300°C as recited in amended claim 1. It is therefore respectfully submitted that Graser et al. do not anticipate amended claim 1.

As for claims 2 to 9, which ultimately depend from claim 1 and therefore include all of the limitations of claim 1, it is respectfully submitted that Graser et al. do not anticipate these dependent claims for at least the same reasons given above in support of the patentability of claim 1.

#### **IV. New Claims 10 to 18**

Claims 10 to 18 have been added herein. It is respectfully submitted that new claims 10 to 18 do not add any new matter and are fully supported by the present application, including the Specification. Since claims 10 to 18 ultimately depend from claim 1, it is respectfully submitted that new claims 10 to 18 are patentable over the reference relied upon for at least the same reasons given above in support of the patentability of claim 1.

V. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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